

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-185764

DATE: June 4, 1976

MATTER OF: Rantec Division, Emerson Electric Co.

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## DIGEST:

1. Where RFP contemplates award of cost-plus-fixed-fee contract for complex test facility and warns that generalized, unspecific responses in proposals will be considered unacceptable, agency's downgrading of proposal for lack of detail in certain areas is not clearly without reasonable basis.
2. Since agency posed 35 written questions to protester, which then had opportunity to submit revised proposal, contention that no negotiations were conducted is without merit. Written or oral discussions are synonymous with negotiations, and no showing is made that discussions conducted were not meaningful.
3. Challenge to agency's determination that protester's offer was unrealistically low in proposed cost is not persuasive where agency had obtained both in-house and independent contractor's cost estimates for procurement of complex test facility, and where protester concedes that its experience does not include constructing any one facility of comparable magnitude.
4. Where protester's revised proposal was found unacceptable or only marginally acceptable in areas amounting to about 35 percent of evaluation basis for award, agency was not required to give any further consideration to proposal, because major revisions would have been required to upgrade it to acceptable level.
5. Agency proposed modification of RFP specifications--which would affect requirements given weight of about 4 percent in RFP evaluation factors--is not change which is substantial enough to warrant complete revision of solicitation within meaning of ASPR § 3-805.4(b) (1975). Contention that agency must cancel RFP and reprocure is therefore without merit.

Rantec Division, Emerson Electric Co. (hereinafter Rantec), has protested against the rejection of its proposal under request for proposals (RFP) No. N00173-75-R-F005, issued by the Naval Research Laboratory (NRL), Washington, D. C. Rantec contends (1) that its proposal was within the competitive range or could have been made so by negotiations, and (2) that NRL may be making a substantial change in the specifications, which would require cancellation of the RFP or further negotiations with Rantec.

The RFP contemplates the award of a cost-plus-fixed-fee contract for a shielded anechoic chamber. The project includes various supporting structures, personnel and equipment doors, safety features, and heating, ventilating and airconditioning (HVAC) equipment. The contractor will be responsible for the design, construction, and certification of the chamber, including performing required interfaces with a partially completed NRL building and the overall structural design. The facility will be used to conduct certain missile tests. Rantec was one of several offerors which submitted initial proposals for evaluation.

The contracting officer reports that Rantec's initial proposal was considered unacceptable. Nevertheless, NRL conducted written discussions with the protester (35 written questions were posed to Rantec). Rantec was also contacted by telephone and asked whether it had any questions about the written interrogatories.

Rantec submitted a revised proposal. NRL evaluated it and determined that it was unacceptable to the extent that meaningful negotiations were precluded. Rantec was advised that its proposal was no longer in consideration because it was technically unacceptable and unrealistically low as to proposed cost.

#### NRL Evaluation and Rejection of Rantec's Proposal

A brief summary of the principal points raised by the protester, and NRL's responses, follows:

--Rantec is the undisputed industry leader in anechoic chambers.

NRL: The anechoic properties of Rantec's proposal were acceptable, but the present project involves not only an

anechoic chamber, but supporting structures, power, lighting, HVAC, and other features as well.

- The apparently successful offeror, Boeing Engineering and Construction (Boeing) has only acted as the manager for one other similar project, and its proposed cost is unrealistic and inflated, being more than one million dollars higher than Rantec's.

NRL: The only similar facility is at the Army Missile Command. Boeing was the prime contractor for that project. Based upon comparison with independent cost projections and Government estimates, Boeing's proposed cost is considered acceptable, while Rantec's is considered unrealistically low.

- Rantec's proposal was disqualified because of minor anomalies which could have been resolved through negotiations.

NRL: The proposal deficiencies related to areas which were stated to be major evaluation factors in the RFP--for example, fire protection and safety; power, lighting and HVAC; and program management. NRL conducted discussions with Rantec but the replies received were insufficient and to a large extent restated the specifications or merely gave assurances that requirements would be met.

- In evaluating Rantec's proposal the Government departed from the RFP terms which did not require elaborately detailed proposals. To submit the degree of detail requested by NRL, an offeror would have to begin performance prior to award of the contract.

NRL: The provision concerning unnecessarily elaborate proposals is a standard clause directed at excluding superfluous art work, bindings, etc. The protester failed to submit requested information which was essential to have an acceptable proposal. The claim that premature performance would be required is frivolous.

- Rantec's revised proposal was apparently evaluated on a different basis from the RFP's stated evaluation criteria; the evaluation improperly emphasized architectural and engineering considerations rather than end product performance.

NRL: All proposals, both initial and revised, were evaluated in accordance with the criteria set forth in the RFP. End product performance is a function of the stated criteria.

At the outset, it must be noted that our purpose in reviewing such issues is not to independently evaluate proposals and render our own determinations as to their technical desirability. Evaluation of proposals is primarily the function of the contracting agency. The scope of our review of the evaluation record is limited to considering whether the agency's technical judgments are clearly without a reasonable basis. Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232, and decisions cited therein. Similarly, we will not "second guess" an agency's cost realism determination unless it is clearly unsupported by a reasonable basis. Management Services Incorporated, B-184606, February 5, 1976, 76-1 CPD 74.

As for the degree of detail which proposals were required to contain, RFP section D cautioned offerors as follows:

"\* \* \* The technical proposal should clearly demonstrate that the prospective offeror has a thorough understanding of the requirements and the inherent technical problems, and has a valid and practical solution for such problems. Statements that the prospective offeror understands, can or will comply with the specifications, and statements paraphrasing the specifications or parts thereof are considered inadequate. It is recognized that all the technical factors cannot be detailed in advance, but the technical proposal must be sufficient to show how the bidder proposes to comply with the applicable specifications, including a full explanation of the techniques and procedures to be followed."

The RFP in this case contemplates a contract for the development of a complex facility. Enclosure 1 to the RFP provided a lengthy (approximately 71 pages) and detailed exposition of the Government's requirements, stated in conceptual or performance-type terminology. Further, RFP section C required offerors to provide information in their proposals addressing approximately 24

specific areas of technical concern. Given the nature of the procurement and the manner in which the Government's requirements were stated, we believe it is apparent that detailed responses from the offerors were expected, and that a failure to provide sufficient detail could result in a proposal being downgraded accordingly.

Rantec's proposal was penalized in the evaluation for lack of detail in certain areas. The contracting officer has stated:

"For example, Protestant's proposal described a fire system 'as specified' with detector exhaust ducts at 'strategic locations.' No detector layout was proposed, no water densities or surface coverage given and most descriptions parroted the specifications. In a later attempt to correct the above, the fix uncovered other problem areas. No anechoic considerations were given to Zone 2 detectors. A proposed wet piped system was found totally objectionable from both a failure (leak) point of view and a shielding (conductor path due to the rust) point of view. No consideration was given to the grounding problem for this external piping. In addition, their proposed approach to the fire prevention problems would have required a prohibitive number of shielding penetrations which would have destroyed the shielding effectiveness. Other proposals such as automatic activation of sprinkler system was found objectionable. In power, lighting and HVAC Protestant's proposal shows a total lack of engineering approach to air Distribution and temperature control creating a potentially damaging moisture condition. HVAC duct work, in one instance, is in the identical location for monorails and a 5 ton traveling hoist. Similarly in program management Protestant, though requested, \* \* \* failed to adequately describe management plans for executing contract objectives and milestones. It failed to provide a basic logic network, a program schedule, a consistent framework for assigning planning and integrating responsibilities, controls and reporting of progress and, in general did not demonstrate proposed actual achievement of program objectives in its prospective role as prime contractor."

We recognize that Rantec, in pursuing its protest, did not have access to the bulk of the NRL technical evaluation record. The Navy denied Rantec's request for this information under the Freedom of Information Act, 5 U.S.C. § 552 (1970 ed.). However, Rantec was furnished with the contracting officer's statement and an opportunity to comment on it. We note that Rantec's comments do not take issue with the specific points cited in the above-quoted statement. In addition, as is our practice, we have reviewed the record of the technical evaluation, including the portions not released to Rantec. EPSCO Incorporated, B-183816, November 21, 1975, 75-2 CPD 338. Specifically, we have considered the individual evaluator's narrative statements, the point scoring, and the overall evaluation results for all the proposals. In our opinion, the record does not provide grounds to support a conclusion that NRL's judgment in downgrading Rantec's proposal for lack of sufficient detail was clearly without a reasonable basis.

In connection with the correctability of its proposal's shortcomings, Rantec asserts that NRL never conducted any "negotiations" with it. In this regard, we have expressed the view that under 10 U.S.C. § 2304(g) (1970) "discussions" and "negotiations" are synonymous. 51 Comp. Gen. 102, 111 (1971); 52 id. 161, 164 (1972). In the present case, NRL posed 35 written questions to Rantec, and Rantec had the opportunity to revise its proposal in light of these questions. Therefore, discussions or negotiations were conducted.

In addition, while discussions or negotiations must be meaningful, their content and extent in a given case is primarily a matter for judgment for the contracting agency, and such judgment is not subject to objection unless clearly without a reasonable basis. 52 Comp. Gen. supra. Moreover, there is no requirement that negotiations be conducted in a "give and take" oral session so long as they are otherwise meaningful. Austin Electronics, 54 Comp. Gen. 60, 63 (1974), 74-2 CPD 61. The protester has not presented any basis, nor do we perceive any, to justify a conclusion that the negotiations were not meaningful in this case.

In regard to the cost realism determinations, the contracting officer has pointed out that NRL used both an independent cost appraisal prepared by a private contractor and an in-house NRL estimate. Both were reportedly based on accepted industry standards. NRL found that Rantec's proposed costs were unrealistically low because the total labor hours were seriously underestimated.

Rantec contends in effect that its experience in producing anechoic chambers renders its estimate more realistic than NRL's. However, this assertion is undercut by NRL's unrefuted statements that the present project extends considerably beyond the furnishing of an anechoic chamber. As NRL points out, Rantec concedes in its proposal that it has not constructed any single facility comparable to the one being procured here. Rantec also relies on the contention that a third offeror's proposed costs were close to its own and considerably below NRL's estimate. Since the third offeror's proposal was also rejected as unacceptable, in part because of unrealistic proposed costs, we do not view this point as persuasive. We see no grounds justifying a conclusion that NRL's cost realism judgments were lacking a reasonable basis.

After evaluating Rantec's revised proposal, NRL concluded that it was totally unacceptable in four areas--fire protection and safety; power, lighting and HVAC; program management; and cost. Also, the proposal was only marginally acceptable as to structural integrity and stability. These areas of deficiency are marked with asterisks in the following statement of the RFP evaluation factors:

"In order to provide a guide to the importance of the various factors of the proposed effort, the proposal acceptance criteria are ranked below in order of importance:

- A. Design features and approach to achieve specified performance. The offeror should give specific justification for the selected design and assembly approach. The design must provide, in descending order of importance.
  - 1. Desired anechoic properties specified in terms of the quiet zone, axial ratio, and polarization integrity.
  - \*2. Structural integrity and stability.
  - \*3. Fire prevention and overall safety.
  - 4. Overall effectiveness of the shielded enclosure.
  - \*5. Power, Lighting and HVAC.

- B. Experience. It is essential that the offeror (or his subcontractors) have specific experience in the design, construction, and testing of shielded anechoic chambers of similar complexity to that required herein.
- C. Test capabilities in the specific areas required.
- \*D. Cost. A realistic cost estimate is required and should indicate knowledge related to the technical requirements.
- E. Manufacturing capabilities and quality assurance (especially in the area of on-site fabrication and assembly).
- \*F. Program Management.

Although all factors are important, the most important is Item A, Design. On a weighted basis, this factor is of about equal importance or value to the sum of Items B, C and D (Experience, Test Capabilities, and Cost). In comparison to the sum of Items E and F, (Manufacturing, Q. A., and Program Management), Item A, Design, is of about four times the value or importance."

The disclosure in the RFP of the precise numerical weights attached to the various factors is prohibited by ASPR § 3-501(b) Sec. D(i) (1975 ed.). However, from the foregoing statement an approximate determination can be made that the areas in which Rantec's proposal was unacceptable or only marginally acceptable involve factors comprising perhaps 35 percent of the total. From this fact, we think it follows that bringing the proposal up to an acceptable level would necessarily involve major revisions to it. Therefore, we have no objection to NRL's conclusion that further negotiations with Rantec were not required. See Julie Research Laboratories, Inc., 55 Comp. Gen., supra, at 384.

#### Possible Modification of Fire Prevention Specification

Under the RFP, samples of absorber materials proposed by offerors were subjected to five fire prevention tests. Two of the tests related

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to the toxic effect of the materials when burned. Rantec asserts, and NRL confirms, that none of the materials proposed passed these two tests.

NRL reports that the state of the art in this area is progressing rapidly, and that it may be possible for the one offeror in the competitive range (Boeing) to meet the requirements before an award is made. If this does not occur, NRL is prepared to modify the RFP fire test requirements. NRL believes that any modification would be relatively minor and would not be sufficient cause to cancel the RFP and reprocure.

The protester, on the other hand, contends that the modification would be very substantial and would require cancellation of the RFP. Rantec points out, in this connection, that RFL's letter rejecting its proposal referred to fire prevention and personnel safety as one of the key aspects of the procurement. NRL itself states that a fire in 1973--which resulted in thousands of dollars in damage and in firefighters being overcome by toxic gases from burning anechoic material--is the basis for the requirements stated in the RFP. Rantec believes that a correct application of ASPR § 3-805.4(b) (1975 ed.) requires cancellation of the RFP, and that several recent decisions of our Office applying this regulation either support its position or at least do not preclude the requested relief. These decisions are West Electronics, Inc., December 9, 1975, 75-2 CPD 376; Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD 144; Computek Incorporated et al., 54 Comp. Gen. 1080 (1975), 75-1 CPD 384; and Iroquois Research Institute, B-184318, February 23, 1976, 55 Comp. Gen. \_\_\_\_\_, 76-1 CPD 123.

ASPR § 3-805.4(b) states:

"The stage in the procurement cycle at which the changes occur and the magnitude of the changes shall govern which firms should be notified of the changes. If proposals are not yet due, the amendment should normally be sent to all firms solicited. If the time

for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors. If the competitive range has been established, only those offerors within the competitive range should be sent the amendment. However, no matter what stage the procurement is in, if a change or modification is so substantial as to warrant complete revision of a solicitation, the original should be cancelled and a new solicitation issued. In such cases, the new solicitation should be issued to all firms originally solicited, any firms added to the original mailing list and any other qualified firms." (Emphasis added.)

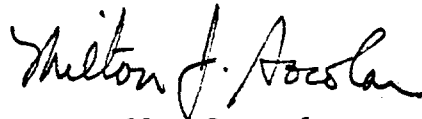
Examination of the RFP evaluation factors and description of their relative weights, supra, indicates that section A.3, "Fire prevention and overall safety," probably has a relative weight of approximately 10 percent of the total. Moreover, the toxic gas tests represent two-fifths of the fire test requirements. Therefore, a modification or waiver of these tests would have an impact of perhaps 4 percent of the overall requirements.

We see no basis to conclude that an RFP modification affecting about 4 percent of the requirements is substantial enough to warrant complete revision of the solicitation. Accordingly, under ASPR § 3-805.4(b), only Boeing, the one offeror remaining in the competitive range, need be advised of any such RFP amendment.

Rantec's contention that NRL has characterized fire prevention as a key requirement is not persuasive. The rejection of Rantec's proposal was based upon its failure to meet several key requirements of the RFP. We have no difficulty in viewing the fire prevention requirements as one of several key areas which, as a totality, could justify rejection of a proposal, yet at the same time not being a sufficient basis, in itself, to warrant a complete revision of the solicitation if modified during the procurement. Rantec is suggesting, in effect, that NRL should now attach to the fire prevention requirements a relative importance beyond that given to them in the RFP's statement of evaluation factors. We see no merit in this argument.

Finally, the decisions of our Office cited by Rantec are not in point for various reasons. Corbetta, Comptek and Iroquois Research Institute each involved a situation where substantial changes were made in the RFP during the procurement. In Corbetta, the acceptance of an initial proposal which substantially varied from specific RFP requirements (the proposal contained at least 35 omissions and deficiencies) effectively waived those requirements for the purposes of competition among the other offerors in the competitive range. In Comptek, the agency in making an award to the sole offeror remaining in the competitive range effected various significant changes in the requirements--for example, changing the quantity from an estimated 135 units (in a requirements-type contract) to a guaranteed minimum of 100 units. In Iroquois Research Institute, there were changes in the performance times, which our decision indicated were generally to be considered a material factor and which should be reflected in the solicitation. As for West Electronics, Rantec interprets this decision as implying that offerors not in the competitive range would have to be informed of a substantial change in the RFP. Since the modification of the fire prevention requirements in the present case would not be a substantial change, it is unnecessary to further discuss this argument.

The protest is denied.



Acting Comptroller General  
of the United States